

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Wireless Telecommunications Bureau	)	
Seeks Comment on Maritel, Inc. Petition	)	
For Declaratory Ruling and National	)	DA 03-3585
Telecommunications and Information	)	RM-10821
Administration Petition for Rulemaking	)	
Regarding the use of Maritime VHF	)	
Channels 87B and 88B	)	

REPLY COMMENTS OF TELESaurus VPC, LLC

Warren Havens and  
Telesaurus Holdings GB LLC  
(510) 841-2220

December 10, 2003

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**REPLY COMMENTS OF WARREN C. HAVENS AND  
TELESAURUS HOLDINGS GB LLC**

Warren C. Havens and Telesaurus Holdings GB LLC, which Warren C. Havens controls (herein together, “Havens and Telesaurus”), pursuant to the invitation extended by the Federal Communications Commission (“FCC” or “Commission”) in the Public Notice issued on November 7, 2003 (“Public Notice”),<sup>1/</sup> hereby submits reply comments in the above referenced matter. In this proceeding, the FCC seeks comments on a petition for rule making submitted by the National Telecommunications and Information Administration (“NTIA”) to the FCC on October 24, 2003 (the “NTIA Petition”).

The NTIA Petition asks that the FCC allocate VHF channels 87B (161.975 MHz) and 88B (162.025 MHz) exclusively for Automatic Identification System (“AIS”) use by both Federal government and non-Federal government entities on a shared basis nationwide. Several entities submitted comments addressing the importance of using the aforementioned channels for

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<sup>1/</sup> *Wireless Telecommunications Bureau Seeks Comments on MariTEL, Inc. Petition for Declaratory Ruling and National Telecommunications and Information Administration Petition for Rulemaking Regarding the Use of Maritime VHF Channels 87B and 88B*, DA 03-3585 (rel. Nov. 7, 2003).

AIS. Only the MariTEL and ShipCom comments justly contemplate the implications of unilaterally taking rights granted by the FCC.

Havens and Telesaurus participated in both FCC Auction 20 and Auction 39 and obtained exclusive geographic rights to spectrum in sixteen VPCSA's in many western states including Arizona, New Mexico, Texas, Nevada, California, Oregon, Utah, Idaho, Wyoming, Montana, South Dakota and North Dakota. As such, Havens and Telesaurus opposes the NTIA Petition and are seriously concerned about the unilateral action taken by a federal government agency to encumber rights awarded through FCC auction. Havens and Telesaurus supports comments of MariTEL and ShipCom that recommend the FCC reject the NTIA Petition and instead, direct the NTIA to define their requirements and enter negotiations to reach a mutually acceptable solution. Otherwise, the FCC auction process and licensing authority would be undermined. In short, if licensees cannot unambiguously count on maintaining rights to spectrum purchased from the FCC (subject to compliance with applicable rules) then investments and operations to serve the public and private markets will be shaken to the core.

Havens and Telesaurus are not familiar with the details of the dispute at issue here. Their comments herein are on principles involved. In this regard, a central recommendation of the Spectrum Task Force report of November 2002, was to clarify and firm up the rights of licensees.<sup>2</sup> In addition, this report found that most spectrum in the nation is unused in time and space—generally, there is no shortage of spectrum if appropriate technology is developed and employed *and intelligent business solutions are utilized*. Regarding such solutions, the report commented favorably on public-private partnerships involving cooperation in spectrum use, as

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<sup>2</sup> ET Docket 02-135. See section on “Clear and Exhaustive Definition of Spectrum Rights and Responsibilities,” starting on page 17.

between utilities and local, state, and Federal governmental entities (p. 43). The Commission itself has made like comments in WT Docket No. 00-32:

[W]e are also interested in exploring innovative and non-traditional means of employing public safety use of the band. A possible approach would be to allow commercial use in support of public safety use in this band. For example, we could allow commercial licensees to utilize the band in order to serve public safety entities.<sup>3</sup>

This was a case where the Commission considering allowing some commercial use to support the primary public safety use. The principal involved in the above references is creative intelligent business solutions in spectrum licensing and usage. Havens and Telesaurus are licensees in the Location and Monitoring Service that allows, under section 90.351, service to Federal entities as well as public safety entities under Part 90. Again, this reflects Commission recognition of business solutions between private Commission licensees and governmental entities. There is no reason to believe that, in the case at issue here, Maritel and the Federal entities involved cannot find a reasonable business solution.

Respectfully submitted,

Warren Havens  
Individually, and as  
President of  
Telesaurus Holdings GB LLC  
(510) 841-2220

December 10, 2003

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<sup>3</sup> The 4.9 GHz Band Transferred from Federal Use . . . , WT Docket No. 00-32, *Second R&O&FNPR*, FCC 02-47, rel. February 27, 2002, ¶36.